In the High Court of Judicature at Madras

Dated: 13/03/2003

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The Honourable Mr.Justice P.K.MISRA

Writ Petition No. 44506 of 2002 and Writ Petition No. 44507 of 2002
and W.P.Nos.3193 and 3194 of 2003

Mahavir Mirror Industries
rep. by its Proprietor .... Petitioner in W.P.Nos.
44506 & 44507 of 2002

M/s. Monika Exim International
Ltd. Rep by its
Managing Director Petitioner in W.P.Nos.
3193 and 3194 of 2003

-Vs-

1. The Designated Authority
Director General of Anti
Dumping and Allied Duties
Ministry of Commerce and Industry
Government of India
New Delhi.
2. The Union of India
rep. by Secretary to Government
Ministry of Finance
New Delhi.
3. All India Flat Glass
Manufacturer's Association
4-7C DDA Shopping Centre
Friends Colony
New Delhi.5. ... Respondents in W.P.
Nos.44506 & 44507/2002

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Friends Colony
New Delhi.5. Respondents in W.P.
Nos. 3193 & 3194/2003

Petitions filed under Article 226 of the Constitution of India
for the issue of Writ of Declaration as stated therein.

For petitioners : Mr.R.Krishnamoorthy
Senior Counsel
for M/s. Vijay Narayan
Mr.V.T.Gopalan
Senior Counsel
for Mr.Gajendran
For respondents : Mr.Harish N.Salve
Senior Counsel
M/s.Ramasubramaniam &
Associates for R3
Mr.A.Kalaiselvam
ACGSC for R2
Mr.Krishnasrinivasan
for M/s. Ramasubramaniam &
Associates.

:J U D G M E N T T

Though the matter was listed for considering the petition filed by the second respondent (interim order of stay) by consent of the learned counsel for the parties, the writ petition, itself was heard on merit, along with the other two writ petitions raising similar questions where the very same learned counsels are appearing for the writ petitioners and the respondents.

2. In all these writ petitions, the prayer has been made for quashing the preliminary findings dated 20.11.2002 under the proceedings No.14/19/2002-DGAD. It has been further prayed that Rule 7 of the Customs Tariff (Identification Assessment and Collection of AntiDumping Duty on Dumped Articles and for determination of injury) Rules 1995 (hereinafter referred to as "the Rules") as illegal and unconstitutional.

3. Section 9A of the Customs Tariff Act 1975 hereinafter called as 'the Act' empowers the Central Government to impose Anti-Dumping duty on any article exported from any country in to India at less than its normal value. Section 9-B (2) empowers the Central Government to make rules which may provide in the manner in which investigation may be made and the factor which should be considered at any stage of investigation and for all matters connected with such investigation. In exercise of rule making power under Section 9B (2) of the Rules 19 95 have been framed. The validity of Rule 7 having been challenged is extracted hereunder:

"Rule 7: Confidential Information:
1) Notwithstanding anything contained in sub-rules (2)93) and (7), sub rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.
2) The designated authority may require the parties providing information on confidential basis to furnish no-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.
3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information."
It is also appropriate to notice some of the other relevant rules:
Rule 5 relating to initiation of investigation and rule 6 which incorporates principles governing investigations.
Rule 12 provides that designated authority shall record preliminary finding regarding export price, normal value and margin of dumping, and in respect of the imports from specified countries, the injury to the domestic industry.
Rule 13 empowers the Central Government to levy provisional duty on the basis of the preliminary findings recorded by the designated authority.
Rule 16 mandates the designated authority to inform all interested parties of the essential facts under consideration which forms the basis for its decision before giving its final findings as contemplated under Rule 17.
Rule 18 empowers the Central Government to levy duty within three months of the date of publication of final findings by the designated authority.
Rule 21 (2) envisages that if, the antidumping duty fixed after the conclusion of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.
Rule 21 (3) provides that if the provisional duty imposed by the Central Government is withdrawn in accordance with the provisions of sub-rule (4) of rule 18, the provisional duty already imposed and collected, if any, shall be refunded to the importer.

4. In the present case, on the basis of the application filed by the third respondent herein, the first respondent (Designated Authority) had initiated proceedings and thereafter notified the customers of the exporting country and also issued notice to the interested party, including the present petitioners. The question in the present writ petitions relates to import of flat glass from countries like Indonesia and China.
5. The grievance of the petitioners is to the effect that on several occasions, the petitioners under various letters, had requested for giving an opportunity of personal hearing and had also called upon the Designated Authority/complainant to furnish the details of various aspects which had been withheld by applying the rule of confidentiality envisaged

under Rule 7 and subsequently without following the principles of natural justice, the Designated Authority has submitted his preliminary findings. The legality of such preliminary findings and validity of Rule 7 have been questioned in these writ petitions.

6. Eventhough the legality and propriety of the conclusion in the preliminary findings have been challenged on several grounds indicated in the writ petitions, learned Senior Counsel appearing for the petitioners has confined his submissions to two points viz., the validity of Rule 7 and the question of non-compliance of principles of natural justice, in the shape of giving an opportunity of personal hearing to the petitioners.

7. The validity of Rules 7 has been challenged herein on the ground that the said rule does not furnish any guideline and gives an absolute discretion to the Designated Authority to withhold furnishing of any information on the alleged ground of confidentiality claimed by the complainant. It has been submitted that while inviting the exporters and importers to respond to the particulars furnished by the complainant, many of the columns have been left blank by applying the principles of confidentiality.

8. The question of validity of Rule 7 had earlier been raised in several other writ petitions, namely, W.P.Nos.3008 of 2002 batch. While upholding the validity of Rule 7 in those writ petitions on 15.5 .2002, it was observed as follows:

"It has to be noticed that the designated authority is a high ranking experienced officer in the rank of Joint Secretary to the Central Government. He is expected to act according to the purpose for which the statutory provisions relating to antidumping have been incorporated in the Act and the Rules have been framed. It is obvious that he has to be guided by the indications given in the Act as well as the Rules. Merely because there is some apprehension that the authority may be abused in a given case is not a ground to set the Rule at naught. Any abuse in the matter of exercising the discretion conferred under Rule 7 can be corrected if necessary by the appellate authority and there is no substance in the contentions raised relating to invalidity of such rule.

9. Learned counsel appearing for the petitioners has submitted that the aforesaid decision is now the subject matter of the appeal, pending before the Division Bench of this Court and, therefore, the question of validity of Rule 7 has to be reconsidered.

10. When a decision is rendered by a Court of Record such decision, apart from being binding on the parties to the litigation, becomes precedent for the very same court as well as Courts subordinate to such courts. Merely because an appeal is filed and is pending, " precedent" value of a decision is not taken away. In the present case, in the normal course, I am bound to follow the earlier decision.

11. Apart from the reasoning given in the said earlier decision, it is apparent that the exercise undertaken by the Designated Authority under the rules is administrative and legislative in nature. The scheme of the Act and the Rules makes it clear that the designated authority is required to make his recommendations which may or may not be accepted by the Central Government while considering the question of imposition of provisional duty or final duty as is envisaged under Rule 18.

12. The question as to whether any duty is to be imposed or

not and the extent of such duty is essentially legislative in nature. Such duty, as per Section 9A can be imposed by following the procedure contemplated under the said Act. The authority exercised, still continues to be administrative and legislative in nature. But for the provisions contained in Section 9-A, 9-B and the rules, no opportunity was required to be given before imposing any duty. If a person has no inherent right of being heard, he cannot claim any such right beyond the provisions which contemplate giving of such opportunity. In such view of the matter, the validity of Rule 7 cannot be challenged on the ground of unguided discretion having been conferred on the authority.

13. Apart from the above, it appears that the materials which have been withheld have not been utilised in the preliminary findings. It may be that the materials which had been withheld, were relevant at the initial stage when the Designated Authority decided to initiate the proceedings under Rule 5(1). Initiation of the proceeding itself is not under challenge and the relevancy of those materials, has, therefore, receded into background. In the present case, the designated authority, while giving his preliminary findings, has referred to the information furnished by the exporters of various countries and the preliminary findings is not at all based on any information furnished by the complainant. In other words, the petitioner has not suffered any prejudice on account of the with holding of the information since the conclusion are based merely on the information furnished by the exporters from whom the petitioner has imported materials. It is not the case of the petitioners that the petitioners and the exporters from whom the petitioners have imported have got conflict of interest.

14. Learned counsel appearing for the petitioners has submitted that the rules provide for giving an opportunity of personal hearing to the petitioner and as such opportunity having not been given, the procedure has been vitiated.

15. It is well settled law that the principles of natural justice, are not embodied rules and the nature and extent of compliance within the principles of natural justice would always depend upon facts and circusmtances of a given case, as well as the interpretation of the various rules. It is, of course, true that a matter of normal principle, the principles of natural justice should be read into the provisions of the statute, unless applicability of such principles of natural justice is expressly or impliedly excluded. It is to be noticed that in rules 6(vi) the rule making authority has merely used the expression that such authority "may allow" the interested party or its representative "to present the information relevant to the investigation orally" and there is no mandatory direction that the designated authority is bound to allow such an opportunity. On the other hand, the language used in under Rules 6(2)(3) and (5) of the Rules, appears to be mandatory in nature. More over under rule 6(6) the oral information shall be taken into consideration by the designated authority, only if subsequently such information is reproduced in writing. It is not the case of the petitioners that they were prevented from furnishing any relevant informations in writing.

16. As already indicated, several other grounds have been raised in the writ petitions challenging the propriety of the conclusions reached by the Designated Authority, but at the time of hearing of the matter, as already indicated, learned Senior Counsel has raised only two contentions

which have been considered and negatived in the preceding paragraph. The other contentions raised in the grounds in the writ petitions have not been pressed into service and relate to the propriety of the findings and regarding the sufficiency of the materials.

17. It is settled law that in a writ of Certiorari, the High Court cannot act as an appellate authority over the decision of the inferior Court or Tribunal. The High Court is required to examine the decision making process and not the propriety of the decision itself on merits.

18. Moreover, the conclusions are merely recommendatory in nature and if any provisional duty is imposed under Rule 15, and no duty is imposed ultimately, the duty collected is liable to be refunded. More over, at the time of giving final findings, it is always open to the designated authority to reconsider the matter and the preliminary findings are not binding as such. In such view of the matter, the other grounds raised in the writ petitions also appear to be without any substance.

19. For the aforesaid reasons, I do not find any merit in the writ petitions which are accordingly dismissed. Connected W.P.M.Ps. are also dismissed. No costs.

Index :Yes
Internet :Yes

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